

Internal Revenue Service

Department of Treasury

District
Director

Delaware-Maryland District

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Contact Telephone Number:

In Reply Refer to:

Date: AUG - 1 2000

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income taxes under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

You incorporated in [REDACTED]

- The purpose is to promote, encourage, and work for the health, safety, and welfare of the residents within the [REDACTED]
- Such additions thereto as may hereafter be brought within the jurisdiction of this Association by annexation; by providing, operating, owning, and maintaining common community properties and facilities including but not limited to streets, roadways, and personal properties incident thereto.
- To provide maintenance, operation, repair, upkeep, and improvements of streets, alleys, ways, storm sewers, sanitary sewers and treatment facilities and easements within said subdivision; to acquire, hold, own, manage, lease, mortgage, or otherwise deal in and dispose of real or personal property of every kind and character.
- To accept gifts thereof from living persons and corporations and by will or otherwise; to do all other acts and things permitted by the statutes under which this Association is formed which shall and any time appear to be conducive to or expedient for the better accomplishment of its purposes and objectives.
- To do all other acts and things permitted under the laws of [REDACTED]

You are a membership organization comprised of two classes of members:

Class A - shall be all every person or entity who is a record owner of an undivided fee interest lot. Class A members shall be entitled to one (1) vote for each lot in which they hold interest required for membership.

Class B - shall be the developer. The Class B members shall be entitled to (10) votes for each lot in which it holds the interest required for membership.

Form 1023 page 2 states the major activities will include the following:

- Roadway and Storm drainage repair and maintenance
- Snow removal
- Grass Mowing and debris removal
- Provide Liability Insurance Coverage
- Enforce Subdivision Restrictions and Covenants.

The annual assessment for each lot sold is \$[REDACTED] per year. There are [REDACTED] lots in this subdivision and there are currently [REDACTED] lots sold.

[REDACTED] President/Treasurer/Director; [REDACTED], Secretary/Director and [REDACTED] Director control the organization.

Paragraph 5.2 of the Declaration of Restrictions and Covenants states, "The assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvements and maintenance of the Properties, services and facilities devoted to this purpose and the homes situated upon the Properties."

"Pursuant to the foregoing, the Association may use and employ assessments to provide for repair, improvement, and maintenance of the common properties, payment of taxes and insurance thereon, for repaving, improvement, repair, and maintenance of streets, alleys, and common areas and for construction, reconstruction, operation, repair, maintenance and improvements of both sanitary sewage plant and system and storm sewers. The enumeration of specific purposes herein, however, shall not be construed to limit the Association to the use of assessments for purposes similar to the foregoing."

Further clarification of your activities revealed the following, "The [REDACTED] individuals who control the organization are [REDACTED]".

Income is derived from annual assessments and expended for snow removal, insurance, maintenance, mowing and operations.

Section 501(c)(4) of the Code provides for exemption from Federal income tax of civic leagues or organizations not organized for profit but operated for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one, which is operated for the purpose of bringing about civic betterment and social improvements.

Revenue Ruling 72-102, Cumulative Bulletin 1972-1, p. 149 held that certain nonprofit organizations of the type usually called homeowners' associations, which are formed to administer and enforce covenants for preserving the architecture and appearance of a housing development and to maintain streets, sidewalks, and other non-residential, non-commercial properties in the development of the type normally owned and maintained by a municipal government, may qualify for exemption under section 501(c)(4) of the Code.

Revenue Ruling 74-99, Cumulative Bulletin 1974-1, p. 131, modified Revenue Ruling 72-102, to make clear that a homeowners' association of the kind described in Revenue Ruling 72-102 must, in addition to otherwise qualifying for exemption under section 501(c)(4) of the Code, satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; (2) It must not conduct activities directed to the exterior maintenance of private residences; and (3) It owns and maintains only common areas or facilities such as *roadways and parklands, sidewalks and street lights*, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners' association.

A review of your application and subsequent documentation disclosed that your organization is comprised of [REDACTED] homeowners, including the developer. It is not a "community" nor does it bear a recognizable relationship to a governmental subdivision, unit or district. In addition, you do not have common areas, such as, roadways or parklands that are accessible to or of interest to the general public. In fact, the only individuals who access your roads are the current homeowners.

Hence, your purported activities are operated exclusively for the benefit of your members and are not within the purview of this section of the Code.

Accordingly, based upon the cited precedence, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120H.

4

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If someone who is not one of your principal officers will represent you, that person will need to file a power of attorney or tax authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Steven T. Miller
Director, Exempt Organization

Enclosure: Publication 892